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State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco		
Counsel for the State Bar <b>MARK HARTMAN</b> Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Telephone: (415) 538-2000  Bar # 114925	Case number(s)  05-0-01688-PEM	(for Court's use)  <b>PUBLIC MATTER</b>  <b>FILED</b> JUN 13 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent <b>MARK DAVID JOHNSON</b> 12232 E. Kings Canyon Rd. Sanger, CA 93657-9401 Telephone: (559) 875-2800  Bar # 90544	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND            DISPOSITION AND ORDER APPROVING</b>  <b>REPROVAL</b> <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  <b>MARK DAVID JOHNSON</b>  Bar # 90544 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

#### A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted November 29, 1979.  
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 13 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- (a)  costs added to membership fee for calendar year following effective date of discipline (public reproof)
- (b)  case ineligible for costs (private reproof)
- (c)  costs to be paid in equal amounts for the following membership years:  
\_\_\_\_\_ (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- (d)  costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (e)  costs entirely waived

(9) The parties understand that:

- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts Supporting Aggravating Circumstances are required.**

(1)  Prior record of discipline [see standard 1.2(f)]

(a)  State Bar Court case # of prior case \_\_\_\_\_

(b)  Date prior discipline effective \_\_\_\_\_

(c)  Rules of Professional Conduct/ State Bar Act violations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d)  Degree of prior discipline \_\_\_\_\_

(Do not write above this line.)

- (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated Indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  No aggravating circumstances are involved.

Additional aggravating circumstances:

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice couple with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

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- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances are involved.**

**Additional mitigating circumstances:**

(Do not write above this line.)

**D. Discipline:**

- (1)  Private reproof (check applicable conditions, if any, below)
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2)  Public reproof (check applicable conditions, if any, below)

**E. Conditions Attached to Reproof:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of one (1) year
- (2)  During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within 30 days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next following quarter date and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. Reason: \_\_\_\_\_
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation.
- (10)  Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.
- No MPRE ordered. Reason: \_\_\_\_\_
- (11)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

(Do not write above this line.)

In the Matter of  <b>MARK DAVID JOHNSON</b> No. 90544	Case Number(s):  05-0-01688-PEM
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### Law Office Management Conditions

- a.  Within 120 days/ ~~xxxx~~ months/ ~~xxxxx~~ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b.  Within \_\_\_\_ days/ \_\_\_\_ months \_\_\_\_ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than \_\_\_\_ hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for \_\_\_\_ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

<p>In the Matter of</p> <p><b>MARK DAVID JOHNSON,</b> No. 90544,</p> <p>A Member of the State Bar.</p>	<p><b>Case No. 05-O-01688-PEM</b></p> <p><b>STIPULATION RE FACTS, CONCLUSIONS OF LAW, AND DISPOSITION</b></p>
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**DISMISSAL OF CHARGE**

Count three of the Notice of Disciplinary Charges, filed March 30, 2006, is dismissed.

**FACTS**

On or about November 13, 2002, Richard Mobley ("Mobley") employed respondent to represent Mobley in a personal injury case. Respondent and Mobley signed a contingency fee agreement whereby respondent was entitled to receive one-third of any settlement proceeds. On the same day, respondent filed a complaint on Mobley's behalf: *Richard Mobley v. Villa Gardens, et al*, Fresno County Superior Court case number 02 CECG04084 ("the Mobley case").

Mobley treated with Function and Action Physical Therapy Imaging Center and Fresno Imaging Center (collectively "the medical providers"). Both Mobley and respondent signed liens in favor of the medical providers. Mobley and respondent agreed that respondent would pay the bills of the medical providers from any settlement proceeds.

At all times relevant herein, respondent maintained a client trust account at West America Bank, account number 255-14344-8 ("CTA").

In or about November 2003, respondent settled the Mobley case for \$14,380.88 and received the settlement check from Fireman's Fund Insurance. On or about November 20, 2003, respondent deposited the settlement check in his CTA.

Respondent gave Mobley a statement of account, which showed respondent's fee as \$4,044.27 and Mobley's share of the proceeds as \$7,000. The statement of account also showed that respondent withheld a total of \$3,336.61 to pay the liens of the medical providers.

The lien of Function and Action Physical Therapy Imaging Center amounted to \$2,911.61. The lien of Fresno Imaging Center amounted to \$425.00.



After depositing the \$14,380.88 settlement check in his CTA, respondent did not promptly pay the medical providers' liens.

After depositing the \$14,380.88 settlement check in his CTA, the balance in respondent's CTA was \$14,467.29. Respondent was required to maintain at least \$3,336.61 in his CTA to pay the medical providers' liens.

Between December 31, 2003, and November 30, 2004, the balance in respondent's CTA fell below \$3,336.61. On or about November 30, 2004, the balance of respondent's CTA was approximately \$300.

Between January 5 and October 4, 2004, Administrative Services, a Division of the Fresno Credit Bureau, sent four letters to respondent inquiring about the status of the Mobley case to determine when the bill from Fresno Imaging Center would be paid. Respondent did not respond to any of the letters and did not pay Fresno Imaging Center's lien.

On or about March 1, 2005, Mobley filed a complaint with the State Bar about respondent's handling of the Mobley case.

On or about March 1, 2005, respondent sent a check payable to Function and Action Physical Therapy Imaging Center in the amount of \$2,911.61.

On or about May 23, 2005, State Bar investigator Crystal Velazco ("Velazco") wrote to respondent regarding his handling of the Mobley case.

On or about July 7, 2005 respondent sent a check to the Fresno Imaging Center in the amount of \$425.00.

On or about May 2, May 23, and September 8, 2005, Velazco sent respondent inquiry letters ("the inquiry letters") by first-class mail to respondent's official membership records address. The inquiry letters asked respondent to provide a written response to the allegations in the Mobley case. Respondent received the inquiry letters, but did not provide a written response to any the inquiry letters.

## **CONCLUSIONS OF LAW**

### **Violation of rule 4-100(B)(4) of the Rules of Professional Conduct**

Respondent wilfully violated rule 4-100(B)(4) of the Rules of Professional Conduct by failing to pay promptly, as requested by a client, any funds in his possession which the client was

entitled to receive as follows: respondent did not pay Mobley's medical liens for more than sixteen months after receiving the settlement funds.

**Violation of rule 4-100(A) of the Rules of Professional Conduct**

Respondent wilfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain client funds in his CTA as follows: respondent allowed the balance in his CTA to fall below \$3,336.61 between December 31, 2003, and November 30, 2004, and allowed the balance in his CTA to fall to approximately \$300 on or about November 30, 2004.

**Violation of section 6068, subdivision (i) of the Business and Professions Code**

Respondent wilfully violated section 6068, subdivision (i) of the Business and Professions Code by failing to cooperate and participate in a disciplinary investigation pending against him as follows: he did not provide a written response to the inquiry letters from State Bar Investigator Velazco.

**MITIGATING CIRCUMSTANCES**

**Emotional/Physical Difficulties**

Respondent suffered a sever stroke and has taken medication on a daily basis since then. After the stroke, respondent moved his law practice to his home.

In 2004, respondent developed kidney problems, which required surgery. Because of family problems, this surgery was delayed. Respondent had the surgery in early April 2005 and was released by his doctor in August 2005.

**Family Problems**

In September 2004, respondent's in-laws were in a traffic accident, which killed respondent's father-in-law and injured his mother-in-law. During her recuperation, from September to December 2004, respondent's mother-in-law lived with respondent and his wife.

**DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING**

On May 2, 2006, the State Bar sent respondent a letter disclosing any pending investigation or proceeding not resolved by this stipulation.

## **ESTIMATED PROSECUTION COST**

The estimated prosecution cost of State Bar case number 05-O-01688-PEM ("the current case") is \$2,336.12. This sum is only an estimate. If the current stipulation is rejected or if relief from the current stipulation is granted, the prosecution cost of the current case may increase because of the cost of further proceedings.

## **SUPPORTING AUTHORITY**

The Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct, standards 1.3, 1.4, 1.5, 1.6, 2.2, and 2.6 support the discipline recommended in the current stipulation.

(Do not write above this line.)

In the Matter of MARK DAVID JOHNSON No. 90544	Case number(s): 05-0-01688-PEM
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

5-31-06                      *Mark David Johnson*                      MARK DAVID JOHNSON  
 Date                                  Respondent's signature                      Print name

~~6/5/06~~                      \_\_\_\_\_                      \_\_\_\_\_  
 Date                                  Respondent's Counsel's signature                      Print name

6/5/06                      *Mark Hartman*                      MARK HARTMAN  
 Date                                  Deputy Trial Counsel's signature                      Print name

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In the Matter of  MARK DAVID JOHNSON No. 90544	Case number(s):  05-0-01688-PEM
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### ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reprovial, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or futher modifies the approved stipulation. (See rule 125(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reprovial may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

6/13/06  
Date

John W. Runkle  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**  
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on June 13, 2006, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING**

in a sealed envelope for collection and mailing on that date as follows:


- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**MARK DAVID JOHNSON  
12232 E. KINGS CANYON RD.  
SANGER CA 93657-9401**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**MARK HARTMAN, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **June 13, 2006.**

  
George Hae  
Case Administrator  
State Bar Court